

Regulation Update

Hazardous Waste Rule Changes Coming

- Why Make Changes?
- Where Are We in the Rulemaking Process?
- What Missouri Rules Are Being Retained?
- What Missouri Regulations Will Be Eliminated?
- What Regulations are Proposed to be Modified?



Hazardous Waste Program
PO Box 176
Jefferson City, MO 65101

800-361-4827
573-751-3176

www.dnr.mo.gov

HAZARDOUS WASTE RULE CHANGES COMING

Jan. 1, 2016, Missourians will see many changes in the Missouri Hazardous Waste Management Regulations, especially in chapters 3, 4 and 5 for hazardous waste generators. Generators can be non-exempt persons, businesses, treatment, storage and disposal facilities (TSDs), industrial and academic laboratories, retail stores, schools, colleges, universities and manufacturers.

Missouri incorporates most federal hazardous waste regulations, but has some additional regulations, most effective since the early 1980s, intended to prevent human exposures to hazardous waste and releases that could damage land, surface water and ground water. Many of these rules are proposed for elimination and several will be changed. You can find Missouri's current regulations in Title 10, Division 25 of the Code of State Regulations.

Why Make Changes?

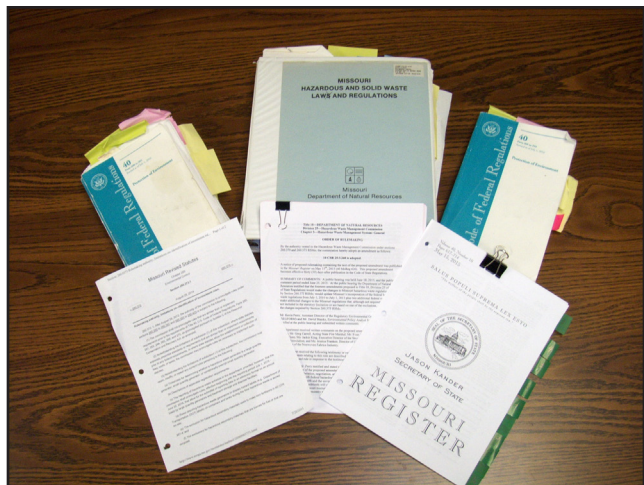
In 2012, the Missouri legislature enacted legislation revising the Hazardous Waste Management Law by adding (Section 260.373 of the Revised Statutes of Missouri (RSMo)). This law, referred to as the "no stricter than" or "NST," required the department to identify Missouri rules that are stricter than corresponding federal regulations in certain subject areas, and to file amendments to eliminate those state rules (with some exceptions). If changes are not made, then any rule that was deemed stricter or that was promulgated sooner than the federal regulations will become null and void on Dec. 31, 2015.

The department met several times with interested parties and identified the regulations requiring elimination or modification. In addition, stakeholders asked for options on some rules that were incorporated into the proposed rules as explained below.

Where Are We In the Rulemaking Process?

The proposed amendments were published in the May 15, 2015 *Missouri Register*, Volume 40, Number 10, pages 626-670. Comments were received and responded to by the department and the Missouri Hazardous Waste Management Commission approved the Orders of Rulemaking on Aug. 20, 2015. The rule was filed with the Joint Committee on Administrative Rules Aug. 21, 2015. The Orders of Rulemaking were filed with the Secretary of State on Sept. 21, 2015. The rules will be published in the *Missouri Register* on Nov. 1, 2015.

with an effective date of Dec. 30, 2015. Contact information for questions on the rules is at the end of this newsletter.



What Missouri Rules Are Being Retained?

NST allows the Hazardous Waste Management Commission to retain or modify state rules for: generator thresholds that distinguish conditionally exempt, small and large quantity generators, descriptions of applicable registration requirements, generator reporting of hazardous waste activities (provided that the department adopts rules effective for reporting period of July 1, 2015 to June 30, 2016 that allow large quantity generators (LQGs) and permitted TSDs to do electronic reporting on an annual basis), display of hazard labels on containers and tanks during storage, zinc fertilizer rule and the rule for hazardous secondary materials burned for fuel or recycled. The commission agreed to modify the rule for display of hazard labels on containers and tanks during storage.

What Missouri Regulations Will Be Eliminated?

Definitions in chapter 3 that were deemed inconsistent with federal rules, acronyms and definitions that are no longer being used are proposed for elimination. Examples of definitions inconsistent with the federal rules are the definition of owner/operator (federal uses owner and operator, and

at times just one or the other depending on rule context). Others are being eliminated because they are no longer used, are so common as to be easily understood, or are more stringent.

Chapter 4 “identification of hazardous waste” regulations will also change. This will remove several clarifications and interpretations of federal regulations in addition to those changes noted below.

Specific dioxin waste codes – Generators will no longer be required to list the Missouri waste code MH02 if the hazardous waste is 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) as listed in 10 CSR 25-4.261(2)(D)3. If the waste contains MH02 or MH01, it will no longer have to be listed as one (1) of the six (6) waste codes on the manifest.

In addition, because we are removing the additional Missouri dioxin waste definition in Chapter 4, a person who generates one kilogram (1 kg) of acutely hazardous waste defined by or listed in 10 CSR 25-4.261, one gram (1 g) of 2,3,7,8-TCDD, one thousand kilograms (1000 kg) of non-acute hazardous waste or an aggregate of one thousand kilograms (1000 kg) of hazardous waste, as listed in 10 CSR 25-4.261, will no longer be required to comply with 90-day generator accumulation and storage requirements in 40 CFR 262.34(a) and (b).



Non-waste oil code on manifests (D098) – Missouri generators will no longer have to list D098 on manifests to designate used oil that cannot

be, or that is not being managed as used oil. This code allowed the state to track used oil that was being disposed as hazardous waste. In addition, any amount of used oil that exhibits a hazardous waste characteristic and that is released into the environment no longer must be managed as hazardous waste. However, federal regulations still require that used oil spills be cleaned up and the material that cannot be managed as used oil must be characterized for hazardous waste disposal.



Household Hazardous Waste – When accepted at a TSD, household hazardous waste will no longer have to be managed as hazardous waste, but may continue to be managed at that facility as household hazardous waste.

Manifest exception report - Aside from the generator having to submit their exception report to the department director rather than to the EPA regional administrator, the generator would follow only federal timeframes and requirements for exception reports. Missouri will no longer provide an optional Missouri form to use for submitting the information, or require specific information to be provided or a signed certification statement.

Hazardous secondary materials used to manufacture zinc fertilizers – Missouri is removing a hazardous waste exclusion for certain hazardous secondary materials used in the production of zinc-bearing fertilizers. The exclusion

was promulgated by EPA in 2002 and adopted into the Missouri regulations in 2006. A provision in 260.373 RSMo allows the Commission to retain, modify or rescind current rules relating to the exclusion for hazardous secondary materials used to make zinc fertilizer. Based on this provision, and on the department's experience with the only facility in Missouri that has previously operated under this exclusion, the department is rescinding the exclusion. This decision is due to health and environmental risks to the facility and others who may attempt to follow the rule and the state's and EPA's observation that the rule is not protective. The only facility known to operate under this exclusion in Missouri is no longer accepting hazardous waste or zinc containing secondary materials. The department has not received any other required notifications to operate under this rule. The department considered modifying the rule, but learned that any additional requirements for initial hazardous waste testing for constituents and levels and reporting to the recipient would have to be done by the EPA. The state cannot impose requirements on out-of-state generators. Requiring in-state recipients to perform this testing would negate any perceived benefits of the rule.

Hazardous waste storage regulations -

- Small quantity generators that accumulate 1,000 kilograms of non-acute hazardous waste in a calendar month will no longer have to have a contingency plan for emergencies pursuant to 40 CFR part 265 subpart D or a personnel training plan pursuant to 40 CFR 265.16. Federal regulations require a contingency plan and personnel training plan only from those who generate 1,000 kilograms of hazardous waste in one month.
- All generators will no longer have to perform daily inspections of "in-use" storage areas subject to spills such as loading and unloading areas or to remedy any deterioration or malfunction of equipment or structures discovered by the inspection on a schedule

which ensures that the problem does not lead to an environmental or human health hazard. According to the federal standard, if a container is not in good condition, or if it begins to leak, the generator must transfer the waste to a container in good condition or manage it in some other way that complies with the regulation. Federal requirements only require weekly inspections of in use storage areas.

- Certain Missouri regulations will no longer apply for container storage areas that hold wastes that do not contain free liquids or those storing less than one thousand kilograms (1,000 kg) of nonacute hazardous waste that contain free liquids. No longer will the storage area need to be sloped or otherwise designed and operated to drain and remove liquid resulting from precipitation. Nor will the option of elevating containers to protect them from contact with accumulated liquid apply.



- Because secondary containment will no longer be required for hazardous waste storage areas holding 1,000 kilograms or more of nonacute hazardous waste containing free liquids, current design standards and weekly inspection will also no longer apply.
- The following Missouri tank storage regulations will no longer apply: Volatile wastes that have a true vapor pressure of

greater than 78 millimeters (mm) of mercury at 25 degrees Celsius shall not be placed in an open tank to prevent volatilization of hazardous wastes into the air, human exposures and accidental ignition.



- Other general requirements for ignitable, reactive, incompatible or volatile wastes will no longer apply to those accumulating 1,000 kilograms of nonacute hazardous waste. These include:
 - Protecting ignitable or reactive wastes from ignition (including separating and protecting the waste from open flames, smoking, cutting and welding), hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (that is, from heat-producing chemical reactions) and radiant heat. While ignitable or reactive waste is being handled, the owner/operator shall confine smoking and open flame to specially designated locations. No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.
 - Providing safety equipment such as fire blankets, gas masks and self-contained breathing apparatus, if appropriate, to the waste being managed.
- The additional Missouri regulation for closure of a generator hazardous waste storage area

will no longer apply. This currently requires at the closure of a storage area, the generator shall remove and properly dispose of all hazardous waste and hazardous residues. Such closure shall occur when the storage of hazardous wastes has not occurred or is not expected to occur for one year.



“Helper” provisions – During meetings with stakeholders, certain regulations were identified that were primarily intended to assist generators with compliance. These included references to other applicable regulations, and others clarified or restated existing federal regulations. Stakeholders requested these be removed. Those to be eliminated include:

- For manifest record retention - The period of record retention referred to in 40 CFR 262.40(d) begins the day the initial transporter signs the manifest. The referenced period of record extends upon the written requests of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity.
- Emergency Procedures - In the event of a spill of hazardous waste at the generator’s site, where there is clear and imminent danger

to humans or the environment, the generator shall take reasonable action to eliminate the danger. In the event of a spill of a reportable quantity of material under 40 CFR 302.4 and 302.5 (Note: this includes table 302.4), a generator shall notify the department in accordance with the notification procedure set forth in 10 CSR 24-3.010.

What Regulations are Proposed to be Modified?

Labeling of containers and tanks of hazardous wastes - Missouri regulations currently require containers of hazardous waste to be packaged, marked, and labeled in accordance with the federal Department of Transportation requirements for transporting hazardous waste during the entire time the containers are in storage. Federal rules only require containers in storage to be labeled with the words “Hazardous Waste” and does not require the Department of Transportation packaging, marking, and labeling until the containers are prepared for transport.



While this requirement is stricter than federal, one of the exclusions in 260.373 RSMo allows the department to retain stricter than federal requirements for state regulations that relate to the display of hazard labels on tanks and containers during the storage period. In discussions with stakehold-

ers, including emergency responders, labels were deemed important to give employees and emergency responders visible, quick information about the contents of containers to promote safety and to prevent the mixing of hazardous wastes that can create fires, explosions and toxic gas releases. The changes eliminate the state requirements for packaging and marking, but retain the requirement that containers be labeled with Department of Transportation labels, or as an alternative, with words that describe the contents of the container. Stakeholders believed that many generators accustomed to the rule that has been in place for 30 years, may wish to continue labeling storage containers per Department of Transportation, as this is a federal shipment requirement.

Based on the same exclusion and safety goal, the draft rules require those storing hazardous waste in tanks to comply with the National Fire Protection Association (NFPA) standard 704: *Standard System for the Identification of the Hazards of Materials for Emergency Response* to identify the hazards of the tank contents. Currently, federal hazardous waste tank regulations require only the label “Hazardous Waste.”



Storage of ignitable and reactive waste -

Hazardous waste generators storing ignitable or reactive waste now comply with some special federal and state requirements for storing

those waste types, all intended to reduce the possibility of a fire or explosion. One specific federal requirement is that generators of 6,000 kilograms of ignitable or reactive waste must store these wastes at least 50 feet from the facility's property line. Storage less than this distance is prohibited, and there are no federal alternatives to compliance.



Missouri's regulations currently require that all generators of ignitable or reactive waste (not just those generating more than 6,000 kilograms of these waste types) comply with the special federal requirements for storing these wastes. Missouri will be deleting the “all generators” language. However, current state regulations give generators and TSDs the option of following additional standards related to fire prevention and suppression that, if followed, allow storage of these wastes within 50 feet of the property line. Missouri is retaining this option, but will be amending it to match the federal quantity limit by stating that those who generate more than 6,000 kilograms of ignitable or reactive hazardous waste may elect to comply with the additional Missouri standards as an alternative to complying with the federal rule. This does not impose any new requirements and limits the rule's applicability to only those generators storing more than 6,000 kilograms to match the intent of the federal regulations. With this revision, some generators

will no longer be required to store their ignitable or reactive waste more than 50 feet from the property line or to meet additional fire-safety requirements.

Satellite accumulation regulations -

The department first proposed to eliminate the additional Missouri requirements, but stakeholders asked for the option to follow either the Missouri or federal regulations. Therefore, Missouri is adopting the federal regulations (that limit accumulation to a total of 55 gallons for all non-acute hazardous waste streams in a satellite accumulation area). However, the state is also providing an alternative that will allow generators to accumulate up to 55-gallons of each waste stream in each satellite accumulation area if the generator follows all federal satellite regulations and the following few additional Missouri requirements:

- Submit an updated Notification of Regulated Waste Activity to the Hazardous Waste Program and submit an updated Notification at any time the generator changes to a different option
- Store only one container per waste stream in satellite accumulation
- Place a beginning date of accumulation on each container
- Store a container for only one year or at the point it is full (whichever comes first) and when meeting the limit, move that container to storage, ship it offsite or manage it according to the generator's permit or certification

Generator's hazardous waste summary

reporting – Reporting is typically done on a form provided by the department, on a reproduction of that form or in the same format as the form after review and approval by the department. Changes were made to allow large quantity generators who file electronically in a manner prescribed by the department to do annual, rather than quarterly summary reports. Large quantity generators may submit an annual report electronically beginning with the reporting period of July 1, 2015-June 30, 2016 or sooner, if the system for electronic reporting is in place prior to that reporting period.



Small quantity generators (SQGs) may also use this system for their annual reporting. The department has established the use of this electronic reporting system for SQGs, LQGs and TSDs.

What stays the same – Missouri's thresholds for hazardous waste generators in chapter 5 will remain the same as they are subject to the exclusion in Section 260.373(3)(a).

For more information - Links to the *Missouri Register* where the rule can be found, and all comments received are posted on the Rules in Development Page at Hazardous Waste Rules in Development - DNR. Questions may be sent to Tim Eiken, Rule Coordinator, by email at tim.eiken@dnr.mo.gov or by phone at (573) 522-8057. Specific questions on new regulations may be sent to Kathy Flippin, Compliance and Enforcement Section Chief, by email at kathy.flippin@dnr.mo.gov or by phone at (573-)751-1718.

Are any other regulations changing?

Additional changes are being made to the hazardous waste regulations in chapters 6, 8, 9, 11, 13 and 16 to correct references to the rules in chapters 3, 4, 5 and 7 that are being changed and also to update our incorporation of federal regulations to July 1, 2013. In total, 14 state rules are being amended in Title 10, Division 25 of the *Code of State Regulations*. The department is also adding (without modifications) six rules adopted

by the Environmental Protection Agency (EPA) since we last incorporated federal regulations. These are listed and summarized below:

- Removal of Saccharin and its Salts from the Lists of Hazardous Wastes – Dec. 7, 2010
- Corrections to the Academic Laboratories Generator Standards – Dec. 20, 2010
- Revisions of the treatment standards for carbamate wastes – June 13, 2011
- Hazardous Waste Technical Corrections and Clarifications – April 13, 2012
- Conditional Exclusion for Solvent Contaminated Wipes – July 31, 2013
- Hazardous Waste Electronic Manifest Rule – Feb. 7, 2014



Removal of Saccharin and its Salts from the Lists of Hazardous Wastes - This action removes saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. EPA also amended the regulations under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to remove saccharin and its salts from the list of hazardous substances. EPA will no longer consider the generation and management of these wastes to meet the criteria for hazardous waste regulations based on a review of the evaluations conducted by key public health agencies

concerning the carcinogenic and other potential toxicological effects of saccharin and its salts.

Corrections to the Academic Laboratories Generator Standards - Missouri is adopting EPA's corrections to the "Academic Laboratories rule" or "Subpart K" that is applicable to laboratories owned by eligible academic entities. There are six technical corrections to this alternative set of hazardous waste generator requirements. The changes correct errors published in the Academic Laboratories Final rule, including omissions, redundancies and also removes an obsolete reference to the Performance Track program, which has been terminated. These technical corrections are expected to improve the clarity of the Academic Laboratories rule.

Revisions of the treatment standards for carbamate wastes -- This includes revisions to the federal Land Disposal Restrictions (LDR) treatment standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off- specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. The current LDR program requires most carbamate wastes meet numeric concentration limits before they can be land disposed. However, the lack of readily available analytical standards makes it difficult to measure whether the numeric LDR concentration limits have been met. This rule provides as an alternative standard the use of the best demonstrated available technologies (BDAT) for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards.

Hazardous Waste technical corrections and clarifications – On April 13, 2012, EPA finalized action on two of six technical amendments that were withdrawn in a June 4, 2010, *Federal Register* partial withdrawal notice. The two amendments include a correction of the typographical error in the entry "K107" in a table listing hazardous wastes

from specific sources and a conforming change to alert certain recycling facilities they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The other four amendments withdrawn in the June 2010 partial withdrawal notice will remain withdrawn unless and until EPA determines action is warranted in the future.

Solvent Contaminated Wipes Rule - Missouri will be adopting EPA's new solvent-contaminated wipes rule in 40 CFR 261.4(a)(26) which conditionally excludes from the definition of solid waste solvent-contaminated wipes that are cleaned and reused ("reusable wipes"), and 40 CFR 261.4(b)(18) which conditionally excludes from the definition of hazardous waste solvent-contaminated wipes that are disposed ("disposable wipes"). For more information on this rule, you may wish to review the following EPA summary document: http://www.epa.gov/wastes/hazard/wastetypes/wasteid/solvents/sumry_chrt_wipes_fnl_rul_070913.pdf

Hazardous Waste Electronic Manifest Rule, Feb. 7, 2014 – This rule is based on the Oct. 5, 2012, *Hazardous Waste Electronic Manifest Establishment Act* signed by President Obama that includes several milestones for EPA to establish a national e-manifest system in partnership with industry and states. The final rule will provide waste handlers with the option to complete, sign, transmit and store manifest information electronically in the electronic system. States that currently receive and collect paper manifest copies will receive copies of manifest data electronically from the system.

Although EPA's final rule is published, hazardous waste handlers cannot begin tracking their hazardous waste shipments electronically until EPA establishes the e-Manifest system. The Act calls for the system to be online by Oct. 5, 2015. Although EPA has not received appropriated funding to date for this program, it is making significant progress in establishing the groundwork for the system. Generators may track

the rule's progress on EPA's e-Manifest web site. <http://www.epa.gov/wastes/hazard/transportation/manifest/e-man.htm>

In addition, the EPA's frequently asked questions document is helpful: <http://www.epa.gov/wastes/hazard/transportation/manifest/e-man-faqs.htm>



What other regulation changes are on the horizon?

On Sept. 25, 2015, EPA published its proposed "Hazardous Waste Generator Improvements" rule in the *Federal Register*. EPA's goals are to make these regulations easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed and close important gaps in the regulations.

Two key provisions where EPA is proposing flexibility are:

1. Allowing a generator to avoid having to comply with regulations pertaining to a higher generator status when generating wastes on an episodic basis, provided the episodic waste is properly managed.
2. Allowing a conditionally exempt small quantity generator (CESQG) to send its hazardous waste to a large quantity generator under control of the same person.

The rule is also intended to enhance the safety of facilities, employees and the general public

by improving hazardous waste risk communication and ensuring emergency management requirements meet today's needs. EPA also proposes to reorganize some of the hazardous waste generator regulations so all of the generator regulations are in one place.

Also, on Sept. 25, 2015, the EPA Administrator published the proposed "Management Standards for Hazardous Waste Pharmaceuticals" rule, to be published in the *Federal Register*. EPA states this rule proposes a tailored, sector-specific set of regulations for the management of hazardous waste pharmaceuticals by healthcare facilities (including pharmacies) and reverse distributors. It also provides standards to ensure the management of hazardous waste pharmaceuticals is safe and workable within the healthcare setting (including hospitals, clinics and retail stores with pharmacies). The goal is to make our drinking and surface water safer and healthier by reducing the amount of pharmaceuticals entering our waterways. The proposal is projected to prevent the flushing of more than 6,400 tons of hazardous waste pharmaceuticals annually by banning healthcare facilities from flushing hazardous waste pharmaceuticals down the sink and toilet.

EPA published the "Definition of Solid Waste" final rule in the *Federal Register* on Jan. 13, 2015. The rule went into effect federally on July 13, 2015. The rule includes new safeguards intended to promote safe and environmentally responsible hazardous secondary materials recycling. The final rule modifies the EPA's 2008 Definition of Solid Waste rule by including new requirements that respond to the concerns expressed by communities and addresses the evidence of mismanagement by some third party recyclers documented in EPA's record. The final rule also establishes uniform legitimate recycling standard for all hazardous secondary materials recycling that is intended to improve compliance and help ensure legitimate recycling and minimize illegal disposal. The department is evaluating this rule and monitoring the impacts of a recent petition to the D.C. Circuit Court concerning the rule.

The majority of the provisions of the Generator rule, the Pharmaceutical rule and the Definition of Solid Waste rule will not be effective until the final rules are published by EPA and subsequently adopted by Missouri through our rulemaking process.

Contact Information

Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102
800-361-4827
573-751-3176

